IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 3310 OF 1991

Rambhaji Baslkirhsna Buchade,
Occupation-Business, Residing at
866, Khonde Building, Gore Ram
Galli, Nashik. ..Petitioner
Orig. Deft.

V/s.

1. Radhabai Madhavrao Khode,
   Occupation-Household.

2. Rajendra Madhavrao Khode,
   Occupation Medical Practitioner.

3. Surendra Madhavrao Khode,
   Occupation Business.

4. Narendra Mahdavrao Khode,
   Occupation-service.

All resident of H.No. 434,
Morewada, Near Shokstambh,
Nasik. ..Respondents
Orig.Plaintiffs.

Mr. S.M. Gorwadkar with Mr. Rohit Pawaskar for the petitioner.

Mr. P.K. Dhakephalkar with Mr. Jagdish Reddy for the respondents.

CORAM : ANOOP V.MOHTA J.

DATE : 18TH AUGUST, 2005.

ORAL JUDGMENT

. The petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the concurrent findings given by the Courts below, thereby

the respondent's suit for eviction on the ground of default, as contemplated under Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act) has been decreed.

2. The petitioner is a tenant of one room on ground floor, in Municipal House No. 866, Gora Ram Galli, Nasik, since more than 25 years at the rate of Rs. 14.04 per month inclusive of education cess at the rate of Rs. 1.04. As there was dispute between the respondents-landlords, about the ownership of the suit premises and as the Municipal Council served a demand notice for recovery of taxes upon the petitioner being a occupier, he deposited the part of the amount from 10.6.1976 to 11.8.1982 without any specific intimation to the respondents-landlords, through the Exhs. 23 to 27 and 30, dated 16/7/1979, 7/12/1982. 12/2/1981, 8/12/1981 and also 10/6/1982. The landlords therefore, by demand notice in question dated 1/12/1982, Exh.18 demanded the arrears of rent plus education cess from the period from 1/8/1978 to 31/12/1982, for 52 months. The said notice was duly served on 21st December, 1982. There is no dispute about the receipt of the notice. There was no reply filed to the said notice. There was

no objection or dispute raised on any count. There was no application filed for fixation of arrears of rent within one month, as contemplated under section 12(3)(a) of the Bombay Rent Act. Thus within the statutory period of 30 days, the petitioner-tenant admittedly not complied with the said provisions.

3. By the written statement, the petitioner tenant stated as under;

> "The defendant is in arrears of rent from December, 1981. He is ready to deposit the arrears or rent upto December,1983 to the tune of Rs. 351/- in the Court."

His defence, therefore, also nowhere supports for grant of protection to the petitioner, merely, because the tenant has expressed his readiness and willing in the written statement for the first time.

4. The basic contention, as raised by the learned Counsel appearing for the petitioner that, as landlords failed to pay the Municipal taxes, and being occupant, as the petitioner received the tax demand notice, he made the payments, till December, 1982. He was not in arrears of rent from 1978 to 31st December, 1982, as

claimed, for 52 months. The amount as paid towards the municipal taxes ought to have taken into consideration by the landlords before issuing the said demand notice. The rent demanded as such was therefore, not correct. The demand notice therefore, itself was bad and not valid. Both the Courts have considered this aspect and held, even after giving benefit of the amount deposited by the petitioner towards the municipal taxes, that the petitioner-tenant was in arrears for more than six months on the date of the notice. The positive admission made in the written statement, as reproduced above, that itself shows that the petitioner tenant was not paying the rent regularly. He neglected to make the payment. For the first time, in the Court submitted to deposit the rent, from December 1981 to December 1983, even if it was said to be exorbitant, and as the arrears of rent claimed for 52 months from 1/8/1978. In the present facts and circumstances of the case, the rent as admitted was due from December, 1981 to December, 1983. The Appellate Court, has considered this aspect also and further rightly observed that on the date of notice, the petitioner tenant was in arrears of rent for more than six months.

5. In absence of non compliance of the demand notice and as held by the Apex Court, as well as, by the Bombay High Court, the Court has no other option but to pass the decree for possession on the ground of default. In the facts and circumstances of the case, it is difficult to accept the case of the petitioner that the demand notice was invalid. In absence of any reply and in absence of any statutory compliance, as referred above, merely because some amount towards the municipal taxes has been paid by the tenant, unilateraly, that itself cannot be the reason to held that the demand of arrears of rent for more than six months was, as made by the respondent was bad. After considering the material placed on the record and the evidence led by the parties and in view of the admission already made about the arrears of rent, there is no case to accept the submission of the petitioner-tenant and to reverse the concurrent findings given by the Courts below.

6. The learned Counsel appearing for the petitioner strongly relied on the following cases;

(Chase Bright Steel Ltd. V. Shantaram Shankar Sawant and another) (1994) 4 S.C.C. 89, 1998(3) Mh. L.J. 152

(Vallabhji Salji Shah V. Gopal Savalaram Rajadhyaksha), 1990 Mah. R.C.J. 624 (Smt. Vijaya Anantrai Modi V. Smt. Bhanumati Tusidas and anothers),1986 Mah. R.C.J.502 (Awabai Muncharji Cama and others V. M.N. Kaka),1977 Bombay Law Reporter, 310 (Babli Alias Jagdishsingh V. Ladharam M. Mirchandani) and contended that as the taxes payable were annual, case ceased to be governed by Section 12(3)(a) but it falls within the purview of Section 12(3)(b) of the Bombay Rent Act.(Vallabhai)(Supra). Therefore, the order of conviction based on 12(3)(a) unsustainable. The education cess therefore, if not payable monthly, the demand of arrears of education cess by the landlord will not be covered by the provisions of Section 12(3)(a) of the Bombay Rent act (Babli (Supra). specially when there was no expressed agreement between the landlord and tenant with regard to payment of such education cess every month (Awabai) Supra). He further submitted that whenever there is such a composite claim in regard to the arrears of rent, which is payable by month the tenant’s case fall outside of section 12(3)(a) and will fall under section 12(3)(b) (Smt. Vijaya) (Supra). To this the learned Advocate appearing for the respondent relied on **(Raju Kakra Shetty V. Ramesh**

Prataprao Shirole and another) ((1991) 1 S.C.C., (Laxman Jiwaba Baherwade and another V. Bapurao Dodappa Tandale (2002) 7 S.C.C. 618).

7. The Apex Court in (Raju Karkra) (Supra) held that the education cess is payable by the landlord annually under Maharashtra Education Cess Act, but parties by an agreement may quantify the amount of cess which would paid by month to month basis by tenant provided the amount does not exceed the tax liability of the landlord. The landlord therefore has right to recover the amount so paid from the tenant in addition to standard rent.

8. The Apex Court in (Laxman) (Supra) while considering the Bombay Rent Act itself, observed that if on receipt of the notice the tenant neither files an application nor paid or deposit the amount of permitted increases, the landlord would be entitled to evict of the tenant. However, if extra amount paid /deposited is sufficient to cover the increased rent payable by the tenant then he is not liable to be evicted. The raising of dispute for the first time, regarding permitted increases in rent cannot be helpful, while contesting

the eviction proceeding.

9. The contention of the respondent-landlord, has substance in the facts and circumstances of the case. There is no dispute in the present case that the monthly rent was Rs. 13 and the quantified education cess was at the rate if Rs,. 1.04 per month.Therefore, even though a composite demand made, which was, it was as per the agreement between the parties. In view of this undisputed position, the demand, as made by the respondent no way affect the landlord’s case. The cases, as cited above by the petitioner-tenant therefore, are distinct and distinguishable on facts and circumstances of the case itself. In the present case, both the Courts after considering the payment made and/or deposited by the tenant towards the property taxes, have been duly considered and adjusted. After the said adjustment, it is a undisputed position on the record, that the petitioner tenant was in arrears of rent for more than six months. Therefore, the landlord proved the case of default.

10. The appellate Court has also observed that in a suit filed against him in the year 1975 and as deposed

by D.W. 1 Ramji in his cross-examination, the Court had directed the petitioner to make the payment to Mr. Madhav. In view of this admission, as well as, positive direction by the Court, even if there is some dispute about the ownership between the landlord still, as the Court had already directed the petitioner to pay the rent to Madhav and as there was established relationship of landlord and tenant, plea and defence as raised on uncertainty of making payment to the real owner-landlord is also not correct. Such plea has no force to support the tenant's case. The Petitioner-tenant failed to establish by positive material evidence on the record to justify that the landlords refused to accept the arrears of rent which they sought to tender through his son Dattatraya. Said Dattatraya was not examined. No case of refusal as such made out by the petitioner. Therefore, in absence of non compliance of mandate of provisions of Bombay Rent Act, within 30 days and even after considering the adjustment of amount deposited by the petitioner in the Municipal Corporation, the case of landlord is proved and both the Courts below therefore, are right in granting decree on the ground of default.

11. In view of this, the petition is dismissed. Rule

discharged. No order as to cost.

[ANOOP V. MOHTA, J.]

. At the request of Mr. S.M. Gorwadkar, one year time to vacate the premises is granted subject to filing an usual undertaking within 15 days. Not to create third party interest during this extended period. If undertaking is not filed, the order of granting time will will stand vacated without reference to the Court.

(ANOOP V. MOHTA, J.)